

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOHN MARK FENTON,

Case No. 3:16-cv-00749-MMD-VPC

Petitioner,

ORDER

v.

ISIDRO BACA, *et al.*,

Respondents.

On April 9, 2018, this Court stayed this counseled habeas matter pending Petitioner John Mark Fenton's exhaustion of his unexhausted grounds in state court. (ECF No. 21.) This case was administratively closed. (*Id.*) Fenton now moves to reopen this matter, explaining that his state-court proceedings have concluded. (ECF No. 25 ("Motion").) The Court finds good cause to grant the Motion.

It is therefore ordered that Petitioner John Mark Fenton's motion to reopen (ECF No. 25) is granted. This case is no longer stayed.

It is further ordered that the Clerk of Court reopen this matter.

It is further ordered that Fention has 60 days from the date of this order to file his first amended petition. Neither the foregoing deadline nor any deadline extension signifies or will signify any implied finding as to the expiration of the federal limitation period, or of a basis for tolling during the established time period. Fenton remains responsible for calculating the running of the federal limitation period and for timely asserting claims, without regard to any deadlines established or extensions granted in this case. That is, by setting a deadline (or any deadline extension) to amend the petition , the Court makes no finding or representation that the petition, any amendments to the petition, or any

1 claims in the petition are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729
2 F.3d 1225, 1235 (9th Cir. 2013).

3 It is further ordered that Respondents must file a response to the amended petition,
4 including potentially a motion to dismiss, within 60 days of service of an amended petition,
5 and that Fenton may file a reply to the response within 30 days of service of the
6 answer. The response and reply time to any motion filed by either party, including a
7 motion filed in lieu of a pleading, will be governed instead by Local Rule 7-2(b).

8 It is further ordered that any procedural defenses raised by Respondents to the
9 counseled amended petition must be raised together in a single consolidated motion to
10 dismiss. In other words, the Court does not wish to address any procedural defenses
11 raised either in seriatum fashion in multiple successive motions to dismiss or embedded
12 in the answer. Procedural defenses omitted from the motion to dismiss will be subject to
13 potential waiver. Respondents may not file a response in this case that consolidates their
14 procedural defenses, if any, with their response on the merits, except under 28 U.S.C. §
15 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondents do seek
16 dismissal of unexhausted claims under § 2254(b)(2): (a) they must do so within the single
17 motion to dismiss, not in the answer, and (b) they must specifically direct their argument
18 to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d
19 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion,
20 should be included with the merits in an answer. All procedural defenses, including
21 exhaustion, instead must be raised by motion to dismiss.

22 It is further ordered that, in any answer filed on the merits, Respondents must
23 specifically cite to and address the applicable state-court written decision and state-court
24 record materials, if any, regarding each claim within the response as to that claim.

25 It is further ordered that any state-court record and related exhibits filed by either
26 Fenton or Respondents must be filed with a separate index of exhibits identifying the
27 exhibits by number. Further, the CM/ECF attachments that are filed must be identified by
28 the number of the exhibit in the attachment. If the exhibits filed will span more than one

1 ECF number in the record, the first document under each successive ECF number shall
2 be either another copy of the index, a volume cover page, or some other document
3 serving as a filler, so that each exhibit under the ECF number thereafter will be listed
4 under an attachment number (*i.e.*, attachment 1, 2, etc.).

5 DATED THIS 3rd Day of August 2023.

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MIRANDA M. DU
9 CHIEF UNITED STATES DISTRICT JUDGE
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